regular hourly rate of pay for the purposes of calculating overtime pay.

It is becoming more common for companies to link pay to performance as they look for innovative ways to improve employee performance. More employers are awarding one-time payments to individual employees or to groups of employees in addition to regular wage increases. Employers have found that rewarding employees for high quality work improves their performance and the ability of the company to compete. If a company's profits exceed a certain level, employees are able to receive a proportionate piece of the profits. Unfortunately, many employers who choose to operate such pay systems can be burdened with unpredictable and complex overtime liabilities.

Under current law, an employer who wants to give an employee a bonus must divide the payment by the number of hours worked by the employee during the pay period that the bonus is meant to cover and add this amount to the employee's regular hourly rate of pay. This adjusted hourly rate must then be used to calculate time-and-a-half overtime pay for the pay period. Employers can easily provide additional compensation to executive, administrative, or professional employees who are exempt under the FLSA without having to recalculate rates of pay.

Some employers who provide discretionary bonuses do not realize that these payments should be incorporated into overtime pay. One company ran afoul of the FLSA when they gave their employees bonuses based on each employee's contribution to the company's success. The bonus program distributed over $300,000 to 400 employees. The amount of each employee's bonus was based on his or her attendance record, the amount of overtime worked, and the quality and quantity of work produced.

When the company was targeted for an audit, the Department of Labor cited it for not including the bonuses in the employees' regular rate for the purpose of calculating each employee's overtime pay rate. Consequently, the company was required to pay over $12,000 in back overtime pay to their employees. The company thought it was being a good employer by enabling its employees to reap the profits of the company and by paying wages that were far above the minimum. These types of actions taken by the Department of Labor are especially surprising in view of Labor Secretary Reich's exhortations to businesses to distribute a greater share of their earnings among their workers.

This legislation will eliminate the confusion regarding the definition of regular rate and remove disincentives in the FLSA to rewarding employee productivity. The definition of regular rate should have the meaning that employers and employees expect it to mean—the hourly rate or salary that is agreed upon between the employer and the employee. Thus, employers will know that they can provide additional rewards and incentives to their nonexempt employees without having to fear being penalized by the Department of Labor regulators for being too generous.

JUDICIAL MANDATE AND REMEDY CLARIFICATION ACT

HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 14, 1996

Mr. MANZULLO. Mr. Speaker, I rise today to introduce legislation that I believe is long overdue. This bill, the Judicial Mandate and Remedy Clarification Act of 1996, seeks to limit the authority of Federal courts to fashion remedies that require State and local jurisdictions to assess, levy, or collect taxes in any way, shape, or form.

We are currently entering into a debate on reforming the Federal Tax Code. We will be studying the impact of Federal tax policy on personal savings and spending, on State and local governments, as well as the over all effect on the economy.

It is time for Congress to address the effect judicial mandates and taxes have on State and local governments. Actions by Federal judges that directly or indirectly force a State or local government to raise taxes have serious ramifications on our Nation's economy. In many cases, remedial decisions have forced State and local governments to increase taxes, further squeezing take-home pay or affecting property values.

For example, in the congressional district I serve, people living in Rockford Illinois Public School District 205 are alarmed over the sharp increase in their property taxes as part of a remedy decision to pay for the implementation of a desegregation lawsuit against the school district. The complaints I have received include the fact that taxpayers are funding millions of dollars for a master, attorney's fees, consultants, and so forth, while seeing little money going to educate their children. They also complain that huge hikes in real estate taxes are making homes in Rockford very difficult to sell. Seniors have advised me that they can barely pay the taxes on their homes. This situation with the Rockford schools is dividing, if not slowly eroding the ties that bind the community.

Rockford, IL, is not the only community affected by judicial taxation. Hundreds of school districts across the country have the same problems. A Federal judge in Kansas City ordered tax increases to fund a remedy costing over $1 billion. Yet, there has been little improvement in the school system. Lawyers, masters, and consultants have been the beneficiaries of such court orders while the childrens' education has seen little improvement.

Judicial taxation is not, however, limited to school districts. Federal judges have ordered tax increases to build public housing and expand jails. Any State or local government is subject to such rulings from the Federal courts.

The U.S. Congress is given the authority under article III of the U.S. Constitution to define the scope of judicial powers.

My bill will place very strict limitations on the power of a Federal court to increase taxes for purposes of carrying out a judicial order. It is not a statement about desegregation, prison overcrowding, or any other decision where a Federal law has been broken. It is about taxpayers obligated to pay for Federal court remedies through higher taxes without recourse—i.e., taxation without representation. Judicial remedies should be, must be, tempered by the community's ability to pay for it, without raising taxes.

If a school board, municipality, or State government feels that taxes must be raised, then the people should be asked. Otherwise, the governing board must operate within its means. There is no such thing as a school district dollar just as there is no such thing as a Federal tax dollar. The money belongs to the people. Judicial taxation is a back door method to take people's hard-earned money without representation.

A judge works under the parameters of the laws available to him or her. The purpose of my legislation is to make it very difficult for Federal judges, who are unelected officials, to raise taxes, and therefore press them to work within the budgetary constraints of the State or local government.

Any lasting result that could come out of a judge's remedial decision must come from the community and must have the people behind it. There has been no success in cases where judicial mandates alone act as the remedy. As I mentioned before, there are many people who are willing to make a positive contribution to solving these problems. By relieving the State and local governments of the burden of judicial taxation, the people of a State, city, or school district will be able to step forward and be part of a solution that is best for the community.

Let me be explicitly clear that I am not talking about whatever remedies are made by the court. I am talking about how to pay for whatever remedy or settlement results from any decision. That is where Congress can have input into this area. I take no position on what remedial actions may be enacted—that is a matter of the elected officials on the State and local level, but I am compelled to take a position on how those Federal court remedies are funded.

Mr. Speaker, I urge that congressional hearings be held soon on the effects of these court orders and this important legislation. Congress must bring to light the effects of such remedies. In the past, there have been attempts to limit the power of the Federal courts to act in certain areas, but there has been little focus on placing restrictions on the courts issuing orders that are essentially unfunded judicial mandates. To date, none of these bills has passed. That is why I crafted carefully focused language to address this very difficult issue.

THE MOTHER AND CHILD PROTECTION ACT OF 1996

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 14, 1996

Mr. TOWNS. Mr. Speaker, I rise today to introduce legislation which ensures that newborn babies and their mothers receive appropriate health care in the critical first few days following birth.

The legislation requires insurance companies, HMO's, and hospitals to offer mothers and newborns at least 48 hours of inpatient care following normal births and 120 hours after caesarean sections. Mothers may choose to go home earlier but insurers and HMO's must then offer them a home care visit within 24 hours of discharge.